

November 25, 1996

Docket Office
California Public Utilities Commission
505 Van Ness Avenue, Room 2001
San Francisco, California 94102

Re: R.94-04-031/I.94-04-032

Dear Docket Clerk:

Enclosed for filing in the above-entitled matter are the original and five copies of the **COMMENTS OF THE CALIFORNIA ENERGY COMMISSION IN RESPONSE TO THE OCTOBER 30, 1996 DIRECT ACCESS WORKING GROUP REPORT ON CONSUMER PROTECTION AND EDUCATION**. Please return the extra copy in the enclosed, stamped, self-addressed envelope. Thank you for your attention to this matter.

Very truly yours,

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Enclosures

cc: Restructuring Service List

**BEFORE THE CALIFORNIA PUBLIC UTILITIES COMMISSION
OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking)	
The Commission's Proposed Policies)	
Governing Restructuring California's)	R.94-04-031
Electric Services Industry and)	(Filed April 20, 1994)
Reforming Regulation)	
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Order Instituting Investigation on)	
the Commission Proposed Policies)	
Governing Restructuring California)	I.94-04-032
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**COMMENTS OF THE CALIFORNIA ENERGY COMMISSION IN RESPONSE
TO THE OCTOBER 30, 1996 DIRECT ACCESS WORKING GROUP
REPORT ON CONSUMER PROTECTION AND EDUCATION**

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I. INTRODUCTION AND SUMMARY

In these Comments, the California Energy Commission (CEC) offers its recommendations to the California Public Utilities Commission (CPUC) regarding the consumer protection and education activities that are necessary to implement the retail features of the restructured electric industry. These recommendations stem from both the October 30 Consumer Protection and Education Report (10/30 Report) and the earlier but more comprehensive August 30 Direct Access Working Group Report (8/30 Report).

Two introductory remarks should clarify the pragmatic approach behind these recommendations. First, the CEC believes that consumer education and protection efforts should be designed primarily to benefit small customers. Large customers can be expected to be sophisticated consumers capable of protecting their own interests. Small customers, on the other hand, will be comparatively unsophisticated and therefore in need of: (1) trustworthy information to enable them to exercise informed choice; and (2) protection from potentially unscrupulous business practices.

Second, other recommendations concern the processes by which future implementation programs will be developed. The various stakeholder working groups that have been active during the past year, particularly the Direct Access Working Group, have accomplished their missions with broad stakeholder participation, open meetings and transparent decision-making. Although large groups can be an unwieldy vehicle for developing detailed implementation plans, the CEC maintains that a stream-lined working group process is **feasible**. More important, it is **necessary** to ensure that the plans are developed in a manner that is participatory, open and transparent. Such goals are of paramount importance when consumer education and protection issues are at stake because meaningful participation in developing implementation plans is the best way to ensure that the needs of all consumer groups are adequately addressed.

Section I.A below summarizes the CEC's recommendations for specific areas covered in the 10/30 Report. Section I.B addresses the process for developing implementation plans in certain critical areas. Details of certain of these recommendations are discussed in subsequent Sections II, III, IV and V.

A. Substantive Recommendations

1. The CPUC should identify which principles it endorses among the "Consumer Principles for Restructuring" set forth in Chapter 2 of the 10/30 Report (revised from the 8/30 Report, Chapter 2). Early in the DAWG process, the Consumer Protection and Education Subgroup (DAWG-D) recognized the need for a set of basic consumer protection principles that should guide the implementation of industry restructuring. None of these principles will become a meaningful guide for restructuring implementation until the CPUC considers, endorses (or rejects) them, and elaborates upon its interpretation of those it endorses.

The CEC emphasizes the need for CPUC elaboration of those principles the CPUC intends to endorse. The 10/30 Report includes alternative, and sometimes inconsistent, interpretations of each of the principles. The CPUC should therefore provide as much interpretative guidance as possible, to minimize ambiguity and to ensure that the principles can be incorporated in the implementation activities of all parties. (See Section II below for CEC recommendations on specific principles.)

2. The CPUC should clarify the roles and responsibilities of parties who will be involved in consumer education and protection activities and ongoing monitoring. Specifically, CPUC guidance is needed in three areas: the "Consumer Education Plan" (CEP), the Restructured Electric Service Education Trust (RESET), and ongoing comprehensive oversight of consumer education that encompasses all market participants.

First, the CPUC should authorize a "Consumer Education Plan Group" (CEP Group) to develop a detailed plan for activities targeted to small customers to take place during 1997. The CEP Group should include representatives of consumers, prospective providers and government in addition to the investor-owned utilities (IOUs). The proposed time-lines presented in Section 7.3.3 of the 10/30 Report underscore the sense of urgency with regard to developing a CEP. Nevertheless, the sense of urgency should not be used as a rationale for compromising the transparency and participation that have characterized the DAWG process.

The CPUC should specify a near-term mission for the CEP Group, and should endorse an open stakeholder-driven process for choosing CEP Group members and assigning leadership responsibilities. (See Section I.B below for CEC process recommendations.) In particular, the CPUC should clarify the role of the IOUs and indicate whether the Group should consider engaging a consultant to perform certain consumer education activities.

Further, Cal. Pub. Util. Code § 392(d) of AB 1890 requires "electrical corporations," a phrase which appears to refer only the IOUs, **"in conjunction with" the CPUC**, to "devise and implement a customer education program." The CPUC should clarify whether other entities besides IOUs are included. Clearly, the CPUC has authority and discretion to require the CEP to be developed in an open stakeholder process.

Finally, with respect to RESET, the CPUC should clarify its purpose, responsibilities and funding sources, and should identify the entity responsible for developing a RESET implementation plan.

3. The CPUC should respond to the concern identified by many parties that the consumer protection provisions specified in AB 1890 (Cal. Pub. Util. Code § 394) need to be enhanced. As set forth in its comments on the 8/30 Report, the CEC supports

stronger registration requirements, the ability of the CPUC to increase the registration requirements when appropriate, and clear CPUC enforcement authority. The lack of explicit authority, for example, to require bonding or to suspend registration of a Energy Service Provider (ESP) for egregious market rule violations, will seriously weaken the CPUC's ability to protect consumers. The CPUC should authorize a stakeholder process to develop a specific proposal for enhancing these provisions. Such a proposal should focus on ensuring the CPUC's ability to respond to changing market conditions and new problems, rather than try to anticipate and itemize all consumer protection activities that may be needed. Once a proposal acceptable to the CPUC has been developed, the CPUC should then seek legislative approval.

4. The CPUC should order the utilities to release to all registered providers a set of three customer information packages, described in Section IV below. The CEC maintains that these three packages, each of which will require different customer consent provisions, represent an optimal balance between the objectives of providing an "informationally-level" playing field for competition and protecting customer privacy, while imposing minimal burdens on the utilities for preparing the data and obtaining customer consent. In addition, public interest and research entities should be included among the recipients of these information packages.

5. The CPUC should endorse market monitoring and oversight activities that are designed to assess how well the market is achieving the objectives of restructuring, including meaningful competition and informed consumer choice among competitive service offerings. Monitoring should not focus exclusively on detecting abusive or illegal practices. (See Section V below.)

6. Once the CPUC resolves access to utility-held customer information for competitive electric service providers, the same access should be extended to energy efficiency service providers, subject to the same terms and conditions imposed on ESPs, to

ensure that energy efficiency can compete with ESPs that provide generation services. (See Section V below.)

B. Process Recommendations

1. General Recommendation

The 10/30 Report identifies a number of areas for which detailed implementation plans are needed, including consumer education, the education trust and registration of providers. The CEC recognizes the necessity to develop a specific, internally-consistent proposal for each area in as short a time as possible. As noted above with respect to consumer protection, the CEC believes it would be a mistake to assign the development of these plans to extremely narrow groups of stakeholders.

The CEC recommends that the CPUC request the DAWG to hold an open meeting for the purpose of selecting three stakeholder teams to be assigned to develop specific proposals for the Consumer Education Plan (CEP), the Restructured Electric Service Education Trust (RESET), and for strengthened registration and enforcement provisions for consumer protection. In order to ensure that the proposals are developed within a reasonable time, participants would have to be willing to commit the human resources and the cooperative spirit necessary to fulfill the mission of their team. Each team should designate one member who will be responsible for reporting regularly to the full DAWG membership on team progress. To the extent that the CPUC authorizes recovery of costs for these efforts, team members who are not supported by ratepayers or funded by the state should be assured of reasonable cost recovery for their efforts.

Some parties will undoubtedly argue that such a process is risky in view of the need to reach agreement in a timely fashion on some contentious issues for the sake of developing a single, coherent proposal. They may criticize the Direct Access Working Group for not achieving consensus on the major issues of the 8/30 Report. The CPUC

should realize, however, that the DAWG did not have consensus as one of its objectives, that it accomplished quite well its objective of identifying issues, alternatives and positions, and that is easily reached consensus when it had to select an editing team, a coordinating committee, and leaders for four subgroups. For the tasks now at hand, we believe that the risk of failure can be minimized if the CPUC assigns an expert referee to provide or facilitate prompt resolution of any dispute that may arise.

2. *Other Areas Requiring Assignment of Responsibility*

The CPUC should designate responsible parties to develop implementation proposals for the following areas:

- a. Providing market information to consumers.** In addition to general education, one or more entities must be responsible for collecting and disseminating market information for use by consumers. (See Section III below.)
- b. Access to customer information.** Assuming the CPUC directs the IOUs to release customer information to ESPs, it should direct parties to develop a detailed plan for creating the information packages to be released, obtaining necessary customer consent and releasing the data to eligible entities. (See Section IV below.)
- c. Market monitoring.** Extensive market monitoring efforts must be put in place contemporaneously with the start of direct access marketing, i.e. several months in advance of 1/1/98. (See Section V below.)
- d. Hearing, resolution and redress of customer complaints.** The CPUC appears to have accepted the responsibility to represent customer interests through the internal reorganization of the Vision 2000 process as modified by legislative

action. It important to ensure that the CPUC has actual authority to address customer complaints against ESPs in addition to the existing electrical corporations.

e. Change of provider and third-party verification. Substantial effort must be undertaken to design the "offer sheet" required by Cal. Pub. Util. Code § 394(b) of AB 1890. It should be designed in a way that facilitates its use as a comparison tool and as a source of information for market monitoring and oversight. In addition, the verification requirements of Cal. Pub. Util. Code § 366(d) must be incorporated into a functional business activity under the CPUC's supervision.

II. CONSUMER PRINCIPLES FOR RESTRUCTURING

Chapter 2 of the 10/30 Report and Chapter 2 of the 8/30 Report list 10 and 11 principles, respectively. Despite disagreement regarding their status, e.g. whether they should be considered a "bill of rights," DAWG participants reached consensus on several broadly worded principles and generally agreed that implementation of restructuring should be guided by a set of principles. Of course, not all parties agree that all principles should be adopted by the CPUC. The CEC, for example, argues that Principle 11 of 10/30 Report be rejected. The CEC recommends, however, that the CPUC adopt the consumer principles one through ten, with certain modifications and interpretations.

Further, parties offered a variety of alternative, occasionally inconsistent, interpretations of each of the principles. The CEC urges the CPUC to consider each of the principles and to provide its preferred interpretations. There are four principles for which the CEC has specific recommendations.

Principle 7. Quality of Service

In creating the conditions for ***meaningful*** consumer choice, it is essential that energy service providers (ESPs) be held closely to "truth-in-advertizing" principles. If consumers cannot believe the information that is provided in the market, then markets will not be perceived as trustworthy and consumers will have to put time and resources to the task of developing accurate information, rather than to making intelligent choices. Such diversions of effort will reduce market participation and accentuate reliance upon default providers, utility affiliates, or those few who are perceived to be trustworthy.

The CPUC should develop and rigorously enforce truth-in-advertizing for the prices and terms and conditions of service. AB 1890 has provided a vehicle to accomplish this: the notice required in Cal. Pub. Util. Code § 394(b). The CPUC should develop monitoring mechanisms to track ESP offerings, collect specific notices provided to customers, and spot check accuracy in performance. Violations of contracted prices or terms and conditions of service should be punished and well publicized. One way the CPUC can foster the objectives of this principle is to require and facilitate the development of unambiguous definitions of the terminology consumers will encounter in the marketplace, such as reliability, clean power, for example.

Principle 9. Universal Service

The CEC supports governmental subsidy to ensure that all households obtain necessary electricity services, including connection to the transmission and distribution grids, and delivery of energy via these grids. Nevertheless, the CEC has serious concerns about designating UDCs as the exclusive "default providers" of electric service, as in the CPUC's Policy Decision, D.95-12-063. In particular, the default provider role will give the UDCs a unique opportunity to maintain considerable shares of the small-customer market both during and after the transition period. The CEC believes, in contrast, that the objectives of restructuring will be better served if the UDCs have no procurement responsibility.

Because of the requirement that IOUs procure from the PX all power necessary to meet the demands for its full-service customers during the transition, this problem may not seem to be as urgent as others. The problem becomes more urgent, however, in light of the recent request by the CPUC for comments eliminating the buy-from requirement. More important, IOUs are clearly attempting to posture themselves as providers of generation services. IOU generation and IOU affiliate ESPs could easily discourage prospective unaffiliated ESPs from entering the market thereby undermining the goal of meaningful customer choice.

Accordingly, the CEC repeats a proposal set forth in its comments to the 8/30 Report: The CPUC should begin to examine now the various options for providing universal and default service in the context of unbundling. We believe there are viable alternatives to assigning this responsibility to the UDC. For example, those who simply have not chosen a non-IOU supplier by a certain date, perhaps 2001, could be allocated to registered ESPs in proportion to their existing market shares as was done with long distance service providers in the AT&T breakup in the mid-1980s. In addition to direct access providers, options should include ESPs that provide PX energy either with or without contracts for differences. For those who cannot afford to purchase energy from a non-IOU provider, subsidies may be more appropriate.

Further, it should be clear from the Low Income Working Group report submitted on October 24, 1996, that local and regional community-based organizations can provide support services to low income and other needy customers. The funds to provide this assistance need not come from electricity ratepayers (although they might) and they need not be distributed only to the UDC. Private ESPs can readily receive supplemental payments if this enables them to provide energy services to low income and other needy customers.

Principle 10. Minimizing Transactions Costs

Similarly, the desire to achieve *meaningful* consumer choice will be enhanced by efforts that reduce transactions costs of consumers acting in a market environment. This requires efforts to educate customers and to provide information that customers can use to make decisions. Market forces alone are unlikely to provide lists of registered ESPs or comparison sheets of prices and other terms and conditions. Ideally, market forces should be able to provide this information without government's direct involvement, but this cannot be expected to occur during the initial years. Accordingly, a governmental agency should be designated as responsible for collecting, assessing and publishing ESP comparison information.

Since the CEC already has experience and expertise in the collection and analysis of certain types of consumer information, the CEC stands ready to assume and/or share the responsibility for collecting and analyzing the information. The CEC recommends that the dissemination of information to consumers be sponsored by a variety of market participants, in addition to governmental entities, and be offered through various media and through the programmatic activities encompassed within the Consumer Education Plan.

Principle 11. Improvement over the Status Quo

Principle 11 states that the objective of restructuring "is to make all consumers better off." The CEC believes that this objective is impossible to achieve and inappropriate to pursue.

The CEC has long asserted that a major goal for industry restructuring should be to increase overall societal economic efficiency. This requires, for example, the use of efficient pricing which may work against the interests of some customers when compared to their present circumstances. Under the existing structure, rate designs can depart quite substantially from true cost of service, resulting in substantial

subsidies to some high-cost customers that are funded by overcharging lower-cost customers within the same customer class. While certain cross-subsidies may be justified to serve certain societal objectives, the principle of economic efficiency should generally prevail.

We recommend that the CPUC **not** endorse Principle 11 and accept that some customers may pay more as a result of restructuring. Truly, needy customers should receive subsidized service through targeted, transparent subsidies.

III. CONSUMER EDUCATION

The CEC offers recommendations on the following consumer education issues: (1) development of a representative group to create a proposed CEP, (2) development of the messages to be given to consumers during 1997, (3) trustworthy market information for small customers, (4) formation and role of RESET, (5) funding of consumer education and protection activities, both for RESET and cost recovery for IOUs and government agencies, and (6) the role of bill formats and bill enhancements as consumer education and protection devices.

1. *Formation of a Representative CEP Group*

Section 5.2 the 10/30 Report notes that a CEP Group has been created by the IOUs to begin developing a CEP. An IOU-oriented group has requested approval from the CPUC to initiate development of the CEP. Most recently, PG&E has distributed a draft CEP that will, apparently, be submitted to the CPUC on November 26 as part of the instant comment proceeding. The CEC strongly urges the CPUC to require broad membership in the CEP Group from the very beginning. For example, if the CPUC approves the idea of using an outside consultant in designing and implementing the CEP, then a broad group of stakeholders should develop the work-statement for the consultant.

We believe that the CEP Group should contain a representative set of utilities, regulatory agencies, consumer interest groups, and market participants who will actually provide educational services to consumers. All of the entities who can logically be considered likely to participate in consumer education should have the opportunity to be part of the process of developing a consumer education plan. The CEC views itself as an integral element of the overall educational process. Specifically, although the CEC does not anticipate an extensive role in dissemination of consumer-oriented materials through the media, the CEC's data collection activities and analysis of consumer decision-making place the CEC in a position to assist in crafting the messages that will be provided to consumers.

2. *Consumer Education Messages*

As efforts proceed to activate a CEP Group, there is a need for the CPUC to clarify the general scope of the messages to be provided to customers in the early part of 1997. The 10/30 Report (Section 5.2) provides some ideas that the CPUC should consider when providing guidance to the CEP Group. CPUC guidance is necessary to ensure that the messages developed by the CEP Group and a possible consultant will be acceptable to the CPUC.

During the first half of 1997, it is appropriate for IOUs to provide consumer education materials, provided that they are confined to the set of general messages listed in the first paragraph of section 5.2.4, i.e. change is coming, the details are evolving, more information will be provided in due course. Development of a CEP by the CEP Group, its submission and review by the CPUC, and its implementation later in 1997 will provide opportunities to refine the messages as restructuring evolves and new market players establish themselves.

3. *Trustworthy Market Information for Consumers*

Section II above, in the context of Principle 10, Minimizing Transaction Costs, notes the need for trustworthy information about products, services and providers for small customers. The cost of comparison shopping will likely discourage small customers from participating in the competitive marketplace, and in the near term the market is unlikely to target small customers for marketing efforts. Therefore, public effort should be devoted to collecting and dissemination of information concerning product and service offerings to enable small customers to make informed choices. The CPUC should affirm the need for such a service, and should provide guidance on how this service will function and be funded.

The CEC proposes that it contribute to this effort by collecting, comparing, and summarizing market information for dissemination to consumers. This work can be performed in conjunction with various entities with consumer education responsibilities.

4. *RESET*

In recent discussions with parties active in preparing the October 30 report, it appears that RESET does not enjoy strong support. Evidence of this can be found in the minimal evolution in the description of RESET between the 8/30 and 10/30 Reports. If RESET is to follow the model of the Telecommunications Education Trust, one of its roles would be to distribute funds to community organizations for local education efforts. What is not clear is whether this should be its only role. For example, should it be the provider of trustworthy information as described in item 2 above? The CPUC should give some further guidance on this question and on the subjects of management and funding. As noted in Section I.B above, the best way to approach this subject would be for the CPUC to provide guidance on a few basic issues and then authorize a stakeholder group to develop a detailed draft proposal for RESET.

5. *Funding*

The 10/30 Report raises various funding issues. The CEC has previously supported cost recovery of utility expenditures to implement direct access. These are likely to be significant and spread over a long period of time. In the very near term, the CPUC must address the issue of funding IOU customer education activities in the first six to nine months of 1997, when no other organization could possibly substitute for the utility.

6. *Bill Uniformity and Billing Enhancements*

Billing practices can play a role in educating customers about energy usage and alternative choices about electricity supplies. This topic was briefly addressed in the 8/30 Report and in the ensuing comments of some parties. Apparently this topic is also being discussed among participants in the Energy Efficiency Working Group in the context of facilitating DSM decision-making. As set forth in the CEC's September 30 Comments, if uniform billing formats are going to be required, the CPUC needs to determine this sooner rather than later, since extensive lead time will be required for those entities preparing bills to develop the necessary computer hardware and software systems. At the very least, the CPUC should give clear direction about where in the restructuring process this issue should be addressed.

IV. ACCESS TO CUSTOMER INFORMATION

Chapter 7 of the 8/30 Report, which is reproduced without modification as Chapter 6 of the 10/30 Report, provides a comprehensive view of the issues involved with allowing access to utility-held customer information. This information is important to two groups: (1) new energy service providers who need it to become viable suppliers to small commercial and residential consumers, and (2) government agencies and others with a public interest who have traditionally had access to this information for the purposes of providing research and analysis to policy makers and market participants.

1. Access by Energy Service Providers

Many energy service providers (ESPs) will be new entities that have not existed in the past and hence do not have their own customer data. Large consumers can be identified by a variety of market research techniques, and are probably already well known to many emergent ESPs. Small commercial and residential customers, however, are not readily identified by standard sources. The basic dilemma is to find the optimal balance between creating an "informationally-level" playing field for ESPs and protecting customer privacy. We believe the optimal balance can be achieved by requiring the utilities to release three "packages" of customer information to all registered providers. The three packages described below are matched with customer consent mechanisms appropriate to the sensitivity of the information. The CEC believes that these packages impose minimal burdens on the utilities for preparing the information for release and obtaining customer consent. The CEC emphasizes that this recommendation is aimed primarily at facilitating small-customer participation in the direct access and aggregation markets.

Package 1 should contain what might be called "basic customer data," i.e., one year's metered data plus customer identification (name, billing and service addresses, phone number, account number). Because this information may be considered sensitive by some customers, it is appropriate to solicit customer consent to release it. Consent should be obtained by a **weak consent** or **opt-out** mechanism, which requires giving customers adequate notification of the intent to release information, plus a no-cost way to **respond if they object to the release**. Those customers who choose not to respond are assumed to consent to the release.

The reason for using a weak consent mechanism for Package 1 is that it is necessary to release contact information for the vast majority of small customers in order for it to be of use to ESPs. An opt-out mechanism will likely result in over 90 percent of

customers being included in the released data set, whereas a ***strong consent*** or ***opt-in*** mechanism, which requires ***explicit authorization to release information***, would likely result in fewer than 10 percent of customers being included in the released data set. We believe that it will not be possible to create an informationally-level playing field unless this basic information is available for most small customers. Therefore, rather than require strong consent to release it, we recommend that the CPUC authorize weak consent for Package 1, and augment privacy protection by restricting access only to registered providers, subject to clear rules governing the uses of customer information and penalties for those who violate the rules.

Package 2 should contain full customer energy records with customer identification, but only for those customers who give explicit authorization to release this information. Customer authorization may be obtained in conjunction with the procedure for Package 1. That is, customers may be notified of the intent to release information and given a postpaid card with two response boxes, one box to opt out of Package 1, and another to opt in to Package 2.

Package 3 should contain extensive ***non-personal*** energy-related data for all utility customers. The qualifier "non-personal" means that customers are not identifiable, therefore no privacy issues exist and no customer consent is required. Package 3 should include individual raw data including metered usage history, energy audits, DSM measures, building specifications and certain demographic data to allow analysis of customer types without compromising customer identity. It should also include such aggregate information as may comprise ratepayer-funded analyses conducted by the utilities. Besides being useful for market research, the data included in this package will be important for developing load profiles for customer groups eligible for load aggregation.

In summary, this recommendation achieves a reasonable balance between facilitating a competitive market and protecting customer privacy, without imposing an undue burden on utilities for creating the information packages and obtaining customer consent. Finally, if the content of released customer information is substantially reduced, we believe small-customer retailers will not enjoy the benefits that competition is intended to create.

2. Access to Customer Information by Public Interest and Research Entities

Certain types of organizations play an essential role in a robust market by providing information and analysis to all other market participants. These entities have not thus far been seen as stakeholders or market participants in the usual sense. They are not utilities, new marketers or retailers, private power producers, customer groups, consumer advocates, regulatory agencies, etc. They include for-profit research entities (e.g., E-Source), non-profits (e.g., Consumers Union, Consumer Reports), private and public universities, government agencies that perform information services (e.g., Federal Bureau of Economic Analysis) and industry associations that create generic product information. Their activities serve the marketplace and the general public, and help protect consumers by enhancing the quality and quantity of useful, accessible information.

These organizations benefit the marketplace by researching, organizing and providing information about the marketplace itself and the services being offered. The information usually has unique value to consumers because it is independent. Many of the entities count as a primary asset their credibility, which derives from their independence from the interests of other market participants. These entities may further contribute to the market and the public interest by creating information products and services that the private sector would not create on its own. The information they

create may be valuable in dispute resolution, although as a rule these entities avoid participating directly as arbiters.

Public interest entities have historically had access to demographic, energy usage, programmatic, energy audit, and technology performance information in utility data bases. Their information needs fall primarily into the non-personal category, although their work has historically been facilitated by some access to personal, individual data under certain controlled circumstances. Recently, however, the competitive uncertainties raised by restructuring have caused this access to become more limited, particularly for the more independent organizations that cannot rely on governmental authority or industry relationships to obtain data.

Given the central importance of information to creating meaningful consumer choice, we believe that these public interest and research entities can contribute greatly to consumer education and provision of reliable market information to consumers. The CPUC should therefore recognize the role of these entities and ensure that access to customer information for competitive providers extends to them as well.

V. OTHER ISSUES

There are two other issues that should be included within consumer education and protection issues. These are: (A) monitoring and oversight of ESP and UDC services, and (B) extending certain consumer protection and education activities to include energy efficiency services and providers.

A. Monitoring and Oversight

Monitoring and oversight should encompass all facets of the electric industry, not just consumer education and protection. To date, relatively little attention has been focused on what monitoring and oversight activities will be performed. These activities

should include macro issues, such as generation market power, and micro issues such as ESP misconduct. The CEC also believes that monitoring and oversight should include diagnosis of problems when it appears that the market is not functioning appropriately, which, in turn, should lead to reasonable adjustments to the relevant market rules.

There are three questions that must be addressed before the parameters of the monitoring-diagnosis-adjustment function will emerge.

What is the monitoring-diagnosis-adjustment function intended to accomplish?

How will this function be integrated with the ongoing market transformation process?

What organizations should be involved in the various activities that will comprise the monitoring-diagnosis-adjustment function?

1. *Purpose of the Monitoring-Diagnosis-Adjustment Function*

The CEC proposes that the purpose of the monitoring-diagnosis-adjustment function be to achieve retail market transformation from an inefficient regulated industry with passive customers accepting a bundle of services, to an efficient competitive industry with active consumers selecting from a array of unbundled services. Monitoring, diagnosis and adjustment should be used as tools to help ensure this transformation. Other tools include consumer education programs, consumer protection programs, and facilitation of market mechanisms to create trustworthy market information.

2. *Design of the Monitoring-Diagnosis-Adjustment Function*

This section addresses the activities that may be necessary to ensure that the monitoring-diagnosis-adjustment function is designed to achieve the market transformation to retail competition where competitive supply and meaningful consumer choice are the goals. Other monitoring and oversight activities, similar in general features but customized to other goals, may also be needed to achieve the goals of restructuring. This brief discussion illustrates that more extended treatment of the topic is needed.

The CEC believes that there should be an iterative process that begins with monitoring various activities in a manner that is informed by a set of hypotheses of possible market failures. However, monitoring should not be limited to looking for certain problems. Rather, this function should be open to the possibility that unanticipated problems may also occur.

Monitoring will include different levels and types of data that correspond to different elements of the restructuring process. For example, review of market power in setting prices for generation services in the direct access market requires information that describes the size of the market and the role of all of the participants within it. Aggregate scale information is needed for this analysis. On the other hand, determining whether customers have been provided accurate price, and terms and conditions within the direct access market requires a method for ongoing sampling of customer-specific transactions.

All data collected as part of the monitoring function must then be analyzed to determine whether or not there is a problem, and if so, whether an adjustment is appropriate. Statistics alone will not necessarily reveal the existence of a problem, or point to the cause. For example, suppose by 2000, 99 percent of residential and small commercial customers remain as UDC default customers served through the Power Exchange. Is this a market failure, and if so where is it? Are consumers making the "wrong" decisions, or is there another explanation? Perhaps ESPs are not offering

price terms sufficiently attractive to induce customers to change providers. On the other hand, if customers are not responding to ESPs who offer substantial savings, then perhaps customer education efforts may not have been adequate, or consumers' level of trust in ESPs may not be well enough established, to justify a change in providers. This is the diagnosis function.

If a problem is diagnosed, possible remedies must be identified and assessed. Of course we may not always be able to diagnose the problem, or find a cost-effective remedy even if we do. Consumers have a variety of reasons for making the choices they make, including the decision not to change.

If a reasonable, cost-effective adjustment can be identified, then it should be implemented. The CPUC should seek authority to adopt appropriate market rules to regulate ESPs in such circumstances. Finally, once the remedy is implemented, it will then become subject to the monitoring process. This iterative process (observation, assessment, diagnosis, evaluating and selecting remedies, and implementing market rule changes) must be carried out continuously.

3. *Proposed Organizational Responsibilities*

The monitoring-diagnosis-adjustment function is necessarily multilayered because it must address various facets of retail restructuring in addition to small customer education and protection. Accordingly, many different organizations must work together to achieve retail restructuring goals.

In Table 1, the CEC proposes organizational responsibilities that match legislative authority and organization expertise that currently exists. Five broad categories of activities are numbered, some of which have subsidiary activities which are lettered. The goal of the activity, or subsidiary activity, is described along with the agencies we believe can best contribute to it.

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Table 1
Proposed Activities and Lead Organizations
for Monitoring, Diagnosis, and Adjustment

Activity	Goal	Organization(s)
1. Development of Initial Market Rules	create a structure which allows the new industry players to operate	CPUC and Legislature
2. Consumer Education Programs		
a. craft the message	develop the message which consumers need in order to understand how to make decisions and where to get information about the options	CEC and RESET
b. educate consumers	provide essential information to new consumers to permit them to operate in the transition	RESET, IOUs and CBOs
3. Consumer Protection Programs	provide initial registration and dispute resolution process allowed by AB 1890	CPUC

4. Facilitate Trustworthy Market Information Mechanisms	create incentives for markets to develop institutions that assist consumers in making decisions using market data that is perceived as trustworthy	CPUC and CEC
5. Monitor/Diagnose/Correct		
a. monitoring	collect primary and secondary information about market performance	CEC, CPUC, and others
b. assessment	process data into contextual information about markets	CEC
c. diagnose	determine reasons for market failures, consumer complaints, and other problems	CEC
d. identify/evaluate options	identify and evaluate feasibility and cost-effectiveness of options to mitigate problems	CEC, CPUC, and Legislature
e. adjustment	revise initial regulations, market rules, and statutes to improve market performance	CPUC and Legislature

B. Extending Consumer Protection and Education to Include Energy Efficiency

The energy industry realized long ago that what customers want are the end-use services that energy powers, not the energy itself. Thus in a very real sense, energy efficiency is a competitor with the various forms of energy, including electricity. Industry restructuring should not therefore tip the playing field in favor of increased energy consumption to the detriment of energy efficiency activities.

Accordingly , energy efficiency providers should be included within the scope of certain consumer protection and education activities, including:

1. Providing education and information about energy efficiency — the technologies, providers, products and services, contracts, etc. — as well as about direct access and other innovations in the sale of electricity.
2. Access to customer information. Energy efficiency providers should have access to non-personal customer information, which we called package [3] in Section IV above. This would allow them to do market research without giving them the contact information needed to do direct marketing. Personal customer information, however, as contained in packages [1] and [2], should be provided only to those energy efficiency providers who are subject to the same rules imposed on ESPs for access to this information.

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Respectfully submitted,

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